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Supreme Court, U.S.
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No. 99-827

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1999

In re Robert V. Steinhilber,

Petitioner,

v.

Michael S. McFarland, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITIONER'S REPLY TO RESPONDENTS' BRIEF

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15pp

QUESTIONS PRESENTED

I. WHETHER A DISTRICT COURT HAS THE AUTHORITY TO MAKE "FINDINGS OF FACTS" PRIOR TO HOLDING A PURPORTED SEVENTH AMENDMENT TRIAL BY JURY, BIND THE JURY TO THOSE "FACTS", AND PROHIBIT A PARTY FROM PRESENTING EVIDENCE AND ARGUMENT CONTRADICTING THOSE "FACTS".

II. WHETHER THE REMEDIES SOUGHT BY THE PLAINTIFFS IN A CAUSE WHICH WAS FILED BY THEM AND ACCEPTED BY THE DISTRICT COURT PURSUANT TO A FEDERAL STATUTE WERE EQUITABLE IN NATURE SUCH AS TO DISQUALIFY DEFENDANTS FROM RECEIVING A SEVENTH AMENDMENT JURY TRIAL WHEN PLAINTIFFS HAD ASKED FOR THE SPECIFIC REMEDIES PROVIDED FOR IN THE STATUTE AND "FOR SUCH OTHER RIGHTS OR REMEDIES EXISTING AT LAW OR IN EQUITY AS THE COURT MAY DEEM REASONABLE AND APPROPRIATE".

III. WHETHER A DEFENDANT IN A CLASS ACTION LAWSUIT FILED BY PLAINTIFFS

AND ACCEPTED BY THE DISTRICT COURT PURSUANT TO THE INTERSTATE LAND SALES FULL DISCLOSURE ACT AS IT EXISTED FROM ITS INITIAL EFFECTIVE DATE OF APRIL 28, 1969, THROUGH DECEMBER 23, 1971, WHEREIN PLAINTIFFS HAD ASKED FOR THE SPECIFIC REMEDIES PROVIDED FOR IN THE STATUTE AND "FOR SUCH OTHER RIGHTS OR REMEDIES EXISTING AT LAW OR IN EQUITY AS THE COURT MAY DEEM REASONABLE AND APPROPRIATE", IS ENTITLED TO A SEVENTH AMENDMENT JURY DETERMINATION OF THE AMOUNT OF DAMAGES.

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PETITIONER'S REPLY TO RESPONDENTS' BRIEF

After reading Respondents' Brief in Opposition to his Petition for Writ of Certiorari, Petitioner is reminded of what then Secretary of State Cordell Hull told the Japanese Ambassadors when on December 7, 1941 they delivered their government's demands on the United States. He said that in all his years he had never seen a document so full of distortions, disingenuous statements, and outright falsehoods. Petitioner has similar feelings about the Brief Respondents' Counsel (Counsel) has filed.

Petitioner realizes that the Court cannot know the specifics of these improper statements, which unless addressed in this Reply might be accepted and considered. He will address the most important matter first; that is, whether he "raised the jury trial issue" (Counsel's words) in his Eighth Circuit Court Appeal. (Pages 4 & 5 of Respondent's Brief.) Counsel claims he "never specifically" did so.

Rather than quoting them, Counsel has actually rewritten the issues Petitioner raised in the Eighth Circuit Court so that Counsel's wording supports Counsel's conclusion. In an attempt to excuse this action, Counsel claims it is "difficult to decipher" Petitioner's pleading. The words Counsel has used are not those of Petitioner, nor do they reflect his plain words and purposes. They are designed to cause this Court to deny Certiorari in accordance with the five cases Counsel cites as authority for doing do. Petitioner believes it is a deceitful ploy.

Page limitations for this Reply don't allow Petitioner to quote the "Statement Of Issues" submitted to the Eighth Circuit Court, but he will refer to and quote from various sections of his Brief to that Court so as to show this Supreme Court that he did raise "the jury trial issue" in his appeal to the Eighth Circuit Court. Page and time limitations for this Reply do not allow for a complete line by line analysis, but Petitioner believes the following examples will suffice.

(References are to Petitioner's Eighth Circuit Brief.)

1. Under "Statement Of Issues" (p. vi), as an introductory statement, Petitioner (then Appellant) stated:

> "..... whether this Eighth Circuit Court of Appeals will allow the District Court to deny him a full, fair and impartial adjudication of the charges lodged against him by reason of its numerous actions/rulings both prior to and during jury trial".

2. On page iii of Brief, under "Table Of Cases, Statutes, and Authorities", Petitioner cited the Seventh Amendment to the United States Constitution, the "Manual for Complex Litigation Third" and Wright's "Law Of Federal Courts", 2nd Edition (both reciting rules and guidelines for Seventh Amendment jury trials). Also cited were United States Supreme Court cases ruling on requirements for Seventh Amendment jury trials: Beacon Theatres, Inc. v. Westover, 359 U.S. 500 (1959), and Dairy Queen, Inc. v. Wood, 369 U.S. 469 (1962). Also cited was Brownlee v. Yellow Freight Systems, Inc., 921 F.2d 745 (8th Cir. 1990, applying principles in Beacon and Dairy Queen.

3. At the very beginning of his "Summary Of Argument" (page 24), Petitioner stated:

> "The District Court violated RVS's right to a full, fair and impartial jury trial under the Seventh Amendment to the United States Constitution and contrary to rulings by the United States Supreme Court and of this United States Court of Appeals for the Eighth Circuit honoring that Seventh Amendment right. The details of this are set forth in Sections I, A and B of this Brief, but for purposes of this summary, it can be said that the District Court did this by making findings of fact which should have been left for the jury to make after RVS (and his co-defendants) had a full, fair and impartially adjudicated opportunity to present all of their reasonably relevant and material testimony and other evidence to the jury. Instead of leaving all fact finding for the jury, the Court ordered the jury to ac-

> cept its findings, and did so in such a manner as to be highly prejudicial against RVS (and his co-defendants). In doing so, it even made a misrepresentation to the jury, and further, allowed Plaintiffs' Counsel to do likewise, e.g., it caused the jury to believe RVS (and JFS) had "agreed" to alleged facts by stipulations, when, in truth, the (current) District Court (judge) had by ruling ordered the alleged facts binding on them in spite of substantial evidence they were false and had never been agreed to by RVS (and JFS); and further even, that some other judge in another trial had made that ruling and other rulings, not the then presiding (current) judge."

4. And continuing on page 26 of Petitioner's "Summary Of Argument", he stated:

> "In effect, the District Court directed the jury to find against RVS by telling the jurors they were bound by the adverse pretrial rulings which had been made against him."

5. In the "Argument" section of Petitioner's Brief, beginning on page 28, after stating that the District Court should not be allowed to make findings of fact "prior to jury trial", Petitioner quoted that Court's Order of September 13, 1994 (which was prior to jury trial):

> "Week-long evidentiary hearings were held in March and July, 1994. Based upon the evidence presented at these hearings AND on the stipulations of fact entered into between plaintiffs and defendants Robert V. Steinhilber and Johnita F. Steinhilber, I make the following findings of fact." (Emphasis added.) The Court went on to list its findings.

(Petitioner's note: Neither Petitioner nor his wife (JFS) ever entered into the stipulations. As part of the District Court's findings of fact prior to jury trial, it issued an Order that they had done so. The Order was in the form of sanctions against Petitioner and his wife because their then attorney had allegedly failed to make a timely

pleading during proceedings presided over by a prior judge approximately eleven years earilier. That prior judge, as well as a second judge, had made no such ruling or even indication of any such violation. In fact, Respondents then attorney had failed to make a proper pleading. The Court made other "findings of fact" prior to jury trial, aside from the Order regarding the stipulations.)

6. On page 29 of the Brief, Petitioner stated:

> "In their Complaint, Plaintiffs asked for a jury trial. In their initial responses to the Complaint, and throughout all proceedings, RVS and JFS continued to ask for a jury trial. As the trial neared, however, the Court indicated that any jury should be merely an advisory jury, and Plaintiffs' Counsel agreed. RVS, JFS and Grandview strongly objected, and the Court proceeded to impanel a jury. After the verdicts, which were completely in Grandview's favor and in JFS's favor as to whether she was guilty of conspiracy, the Court and Plaintiffs' Counsel opted for considering the jury as having been merely an advisory jury. Strong objections and pleadngs were presented to the Court by RVS, JFS and Grandview, and the Court finally ruled that they were entitled to a Seventh Amendment Jury trial."

7. On page 29, Petitioner quotes from § 22.53, note 455, of "The Manual for Complex Litigation Third", which cites Beacon, and states:

> "The court must also consider the proper sequencing of the jury and nonjury decision to comply with Beacon Theatres, Inc. v. Westover, under which the right to a jury trial on legal claims may not be lost by a prior determination of equitable claims, "except under the most imperative circumstances." The Court went on to say that it "cannot now anticipate" such circumstances."

Petitioner went on to say on page 30:

"Beacon was followed by other cases which held against the "deprivation of the defendant's right to trial by jury". (Dairy Queen, Inc. v. Wood, 369 U.S. 469, 5 Fed. Rules Serv. 2d, 1962.) In Brownlee v. Yellow Freight system, Inc., 921 F.2d 745 (1990), an Eighth Circuit Court of Appeals case, the Court stated:

"Where legal and equitable claims are joined in the same complaint, legal claims should be tried first to the jury and facts decided by the jury will be conclusively established as between the parties under the doctrine of collateral estoppel."

Thus it is seen that Petitioner very strenuously raised the Seventh Amendment "jury trial issue" (Respondents' words) in both of the lower courts.

Under their "Argument" heading (p. 3), Respondents cite two recent Eighth Circuit cases having to do with equitable issues. Neither of them addresses Seventh Amendment jury trial rights, the matters which are of concern in Petitioner's case.

Under their "Statement Of The Case" (p. 1), Respondents state Winnebago South, Inc. (WSI) is owned by both Petitioner and his wife (JFS), using the term "their company". Counsel knows very well that Petitioner alone owned WSI, and that JFS was not a stockholder, officer, director, employee, consultant, etc. in WSI, and took no part in its operations. There is no evidence contrary to these facts, and there is substantial evidence supporting them, including Plaintiffs'/Respondents own pleadings, and testimony of numerous witnesses, e.g., WSI officers and other employees, directors, Court-appointed defendants' liaison attorney, and testimony of Respondents' witnesses.

In the same sentence as addressed above, Respondents' indicate that JFS participated in filing WSI's HUD Statement of Record and Property Report. There is not an

ounce of truth to that - JFS had nothing to do with making any such filings. This statement by Respondents is the first time in the more than 28 years of this case that Plaintiffs/Respondents, or anyone else has even suggested such an allegation. The statements in the paragraph immediately above stand. (All reports to HUD were true!)

Respondents continue on page 2: "The development failed ....."

The development did not fail, it was stopped as a result of the actions of the then Plaintiffs'/Respondents' attorneys and racially motivated vigilantes from the Winnebago North subdivision who had vowed to stop its development by their vigilante actions, which included cutting a whole in the Winnebago South dam one night, among other such things. Plaintiffs'/Respondents' attorneys invited Winnebago South lot owners to numerous meetings to develop their lawsuit, and finally got 12 families to agree to filing it, out of a total of 326. The overwhelming evidence is there, the record clear, these are the facts. These are some of the reasons a Seventh Amendment jury trial was so feared by Plaintiffs/Respondents and the District Court.

Near the bottom of page 2, Respondents state: "The appeals were briefed by RVS separately, ..."

That is an absolutely false statement, JFS does her own pleadings and would not allow Petitioner to do them for her. This is just another example of the reckless, irresponsible attitude of Counsel for Respondents. On one occasion years ago, Respondents' then Counsel (and then an associate of present Counsel) wrote the Judge that that Petitioner and his wife (JFS) were divorced. They have now been married 48 years, with no hint of divorce. Petitioner found the letter and other items in the Federal Records Center in Kansas City, not in the District Court.

On page 6 of Respondents' Brief, under the heading "II. THE PETITION CONTAINS MISSTATEMENTS OF FACT AND LAW", Counsel states: "The state of the record in this case, which is virtually non-existent by

reason of RVS's failure to provide the necessary transcripts for appellate review, makes it difficult to address all of the misstatements of fact and law contained in the Petition. Nevertheless, the primary misstatements are as follows:"

First of all, Respondents are free to order any and all of the transcripts they want. If they prevail in the case, they will be reimbursed - the subdivision has easily increased in value to 12 million plus dollars. And, under the Rules, they can charge Petitioner for the transcripts.

Secondly, Respondents' statement is absolutely false. The District Court record contains several thousand pages of court-reporter transcripts (2,046 pages alone had been ordered by Petitioner's wife) involving 22 different hearing dates, 47 sets of court-deputy minute sheets for as many court sessions, and many thousands of pages of pleadings (with hundreds of exhibits).

Following is item 1 of the alleged "MISSTATEMENTS":

"1. At page 4 of the Petition, RVS gratuitously and falsely states, "Respondents prosecuted the action on an occasional basis only; it had no merit. At one time Plaintiffs' lead attorney stated his law firm had filed the case to gain experience in class action lawsuits, which were then (1971) becoming popular with attorneys." This statement is obviously false. The case was filed to seek redress for wrongs commited by RVS and others against the plaintiff class."

Petitioner believes the tone of Respondents' statement and the use of the words "obviously false" provides an insight into the why and how of Counsel's thinking in regard to making various irresponsible statements. The District Court record is clear: the case had been on the docket for more than 20 years before Petitioner and his wife were, for lack of finances, required to become active in its proceedings. During that period of time, there were long periods of time when Plaintiffs/Respondents failed to prosecute the case. In the most grievous instance - from June 30, 1981 to December 5, 1985 (almost 4½ years) -

the Clerk of the Court issued a "J-6 Card" dismissing the case for lack of prosecution, a procedure which could have been applied after only 3 years of lack of prosecution. It was not until November 29, 1985 that defendant Grandview Bank filed a Motion To Dismiss for lack of prosecution. That is when (12-5-85) Plaintiffs'/Respondents' Counsel filed a pleading opposing the Motion and reviving the case.

Further, in regard to the statement by Respondents' previous lead attorney, that statement was made in front of three individuals, including the court-appointed defendants' liaison attorney, and to Petitioner's knowledge, it has never been denied by that lead attorney, even though the statement has been in pleadings and testimony several times. Respondents' present Counsel was not there, and could not know, and under existing circumstances can not responsibly state it is obvious the statement wasn't made.

Still further, Plaintiffs/Respondents have not produced a scintilla of evidence that RVS and others committed any wrongs whatsoever. Their entire case is based upon the court ordered, alleged stipulations.

In regard to the circumstances Respondents cite as the reasons for filing this case, Petitioner refers to his statements on page 6 of this Reply, beginning with:

"The development did not fail, ..."

Following is item 2 of the alleged 'MISSTATEMENTS":

"2. At page 4 of the Petition, RVS falsely states: "At the time this lawsuit was filed, WSI was not delinquent in any way, shape, or form, i.e., not in regards to financial or developmental obligations." The trial court's pretrial findings, by way of stipulated finds of fact, clearly rebuts RVS's statement. The court's findings are replete with examples. For instance, the case was initially filed on December 23, 1971. On October 22, 1971, things had deteriorated to the point that HUD was compelled to issue an Order of Suspension directing a halt in all sales of property in the development."

Respondents' statement in this item 2 tends to prove the truth of the statement of Petitioner which they say is false. Even when challenged by Petitioner's succinct statement that WSI was not delinquent in any way, shape, or form, they cannot produce a single way, shape, or form in which WSI was delinquent. The strongest wording they can "muster-up" is that "things had deteriorated to the point that HUD was compelled to issue an Order of Suspension directing a halt in all sales of property in the development." HUD was not "compelled" to do anything of the kind! The record is clear and has been accepted by Respondents themselves that all sales had been stopped voluntarily by WSI after the Winnebago North vigilantes came down one night and cut a whole in the Winnebago South dam - they got caught in the act, with the Sheriff on the scene. Plaintiffs'/Respondents attorneys and the vigilantes had been sending false allegations to HUD for months before this lawsuit was file, as part of their plan to stop the Winnebago South development. Their former lead attorney once admitted they had been in contact with HUD. Petitioner requested a hearing on the allegations, according to ILSA Rules, but he suffered a severe heart attack which disabled him for approximately two years, and no hearing ever took place.

Respondents' statement in this item 2 refers to "The trial court's pretrial findings", and "The court's findings". It is about the Court making such pretrial findings that Petitioner complains. (Emphasis added.)

Item 3 of the alleged 'MISSTATEMENTS' is basically a repeat of item 2, in that it provides no evidence which contradicts Petitioner's challenge that "no evidence was ever produced to substantiate their allegations". All that is provided are words that "the trial court's voluminous pretrial findings of fact, which are supported by facts found to have been stipulated to by all of the relevant parties." (Emphasis added.) Their entire reliance is upon the very pretrial findings by the court about which Petitioner complains. Respondents seem to admit that the Court found facts in addition to the alleged stipulations. They state those additional "facts" support the "facts" in the alleged stipulations. (In truth, there was no agree-

ment as to stipulations. By letter to the second judge in this case (5-31-85) Respondents admitted was no agreement (Cir. Ct. Ex 230). Neither the first or the second judge found an agreement had taken place.

In regard to item 4, wherein Respondents claim Petitioner is seeking sympathy from the Court, it is obvious from a reading of his Petition that he was merely explaining why he was proceeding pro se. Counsel was certainly disingenuous in claiming Petitioner had been disingenuous in not disclosing to the Court that his wife "is an actively practicing, licensed attorney." (Their words.) Counsel knows very well, by reason of a court-ordered affidavit, that Petitioner's wife's income from her practice averages only $75.00 a week. She is 75 years old, has severe osteoporosis (has had four compressed fractures of her vertebrae), and can only read by using magnifying glasses due to advanced macular degeneration. She entered law school at 52 years of age. Not the impression Counsel wanted to leave, no doubt.

Respectively submitted,

Robt. V. Steinhilber

ROBERT V. STEINHILBER
Pro Se

AFFIDAVIT

I declare under penalty of perjury that my statements in the foregoing Reply are true and correct.

Robt. V. Steinhilber

ROBERT V. STEINHILBER

Executed and Acknowledged by Notary on January 2, 2000.

(Seal)

Henry R. Caplan
Commission # CC 878034
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Notary Public

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